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6 IN THE UNITED STATES DISTRICT COURT  
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 **GUIDELINES FOR ATTORNEY'S FEES MOTIONS**  
11 **IN CASES BEFORE JUDGE WILLIAM ALSUP**

12 For cases before Judge Alsup, these guidelines elaborate on the procedures to be used for  
13 motions for attorney's fees under the Federal Rules of Civil Procedure and the local rules. The  
14 process will ordinarily be bifurcated into two sequential determinations: (i) the entitlement to fees (or  
15 not) and (ii) the amount. Counsel are advised to read these guidelines at the outset of a case so as to  
16 maintain their records contemporaneously in a way amenable to the required declarations.

17 1. Rule 54(d) of the Federal Rules of Civil Procedure requires that any motion for  
18 attorney's fees must be served and filed no later than fourteen days after entry of judgment and must  
19 contain certain information, including the contract or statute authorizing fees and why the movant is in  
20 fact a prevailing party or otherwise entitled to fees. Local Rule 54-5(b) requires such motions to  
21 include, among other things, three types of sworn information:

22 (1) A statement that counsel have met and conferred for  
23 the purpose of attempting to resolve any dispute with respect to the  
24 motion or a statement that no conference was held, with certification  
25 that the applying attorney made a good faith to arrange such a  
conference, setting forth the reason the conference was not held; and

26 (2) A statement of the services rendered by each person  
27 for whose services fees are claimed together with a summary of the  
28 time spent by each person, and a statement describing the manner in  
which time records were maintained. Depending on the  
circumstances, the Court may require production of an abstract of or  
the contemporary time records for inspection, including *in camera*  
inspection, as the Judge deems appropriate; and

(3) A brief description of relevant qualifications and experience and a statement of the customary hourly charges of each such person or of comparable prevailing hourly rates or other indication of value of the services.

2. The degree of specificity required by sub-paragraph (2) of Local Rule 54-5(b) with respect to individual time entries is not spelled out. For cases before Judge Alsup, counsel will be spared the chore of substantial detail during the first stage, *i.e.*, the determination of entitlement, but more detail will be required at the second stage.

3. In addition to meeting all other FRCP and local rule requirements, the first-stage declaration need *not* specify exact detail, time entry by time entry, but must state the overall compensable time, separately, for each attorney and paralegal, the time period of his or her services, the various billing rates for the timekeeper over said time period, and a summary list of the primary projects the timekeeper worked on. A “project” means a specific deposition, motion, witness interview, and so forth. It will be unnecessary to break down the person’s total time by each project at this stage. The declaration must demonstrate that “billing judgment” was used to eliminate duplication, excess, associate-turnover expense, and so forth, before arriving at compensable time. The declaration or brief must also identify each issue on which the applicant prevailed and, separately, each issue on which the applicant did not prevail. Any claim for a multiplier must be justified at this stage.

4. The foregoing should be sufficient for the opposing party to challenge any entitlement to fees. The first-stage entitlement motion shall be resolved on the normal 35-day track. An opposition should list all objections to the proposed fee award, including identification of all distinct issues on which the applicant did *not* prevail and, separately, identification of those on which the applicant *did* prevail. Any other arguments for across-the-board reductions and/or against multipliers should also be made. The first stage, of course, can be simplified by a stipulation as to entitlement.

5. Once any order establishing entitlement to fees (and on what issues) is made, then the following procedure will ordinarily be used at a second stage to determine the amount of an award. The second stage will require substantially more detail. It will be structured to allow meaningful evaluation of the time expended and to encourage reasonable compromise as to the amount —

without prejudice to any appeal as to entitlement. Any entitlement order will set specific deadlines for the second-stage milestones.

6. With the benefit of the entitlement order, representatives of the parties with final decision authority shall meet in person and confer again to determine a reasonable award for attorney's fees, reserving as appropriate the issue of entitlement for any appeal. The parties shall then advise the Court whether they have reached such agreement and, if so, the terms and the amount. Any stipulated compromise will be the end of the entire process, subject to any appeal reserved as to entitlement.

7. Upon failure to stipulate to the amount, the applicant must file and serve a detailed declaration, organized by discrete projects, breaking down all attorney and paralegal time sought to be recovered. For each project, there must be a detailed description of the work, giving the date, hours expended, attorney name, and task for each work entry, in chronological order. Again, a "project" means a deposition, a motion, a witness interview, and so forth. It does not mean generalized statements like "trial preparation" or "attend trial." It includes discrete items like "prepare supplemental trial brief on issue X." The following is an example of time collected by a project:

PROJECT: ABC DEPOSITION (2 DAYS IN FRESNO)

Date	Time-keeper	Description	Hours x	Rate =	Fee
01-08-01	XYZ	Assemble and photocopy exhibits for use in deposition	2.0	\$100	\$200
01-09-01	RST	Review evidence and prepare to examine ABC at deposition	4.5	\$200	\$900
01-10-01	XYZ	Research issue of work-product privilege asserted by deponent	1.5	\$100	\$150
01-11-01	RST	Prepare for and take deposition	8.5	\$200	\$1700
01-12-01	RST	Prepare for and take deposition	<u>7.0</u>	\$200	<u>\$1400</u>
Project Total:			<u>23.5</u>		<u>\$4350</u>

8. All entries for a given project must be presented chronologically one after the other, *i.e.*, uninterrupted by other projects, so that the timeline for each project can be readily grasped. Entries can be rounded to the nearest quarter-hour and should be net of write-down for inefficiency

1 or other cause. Please show the sub-totals for hours and fees per project, as in the example above,  
2 and show grand totals for all projects combined at the end. Include only entries for which  
3 compensation is sought, *i.e.*, after application of “billing judgment.” For each project, the declaration  
4 must further state, in percentage terms, the proportion of the project directed at issues for which fees  
5 are awardable and must justify the percentage. This percentage should then be applied against the  
6 project total to isolate the recoverable portion (a step not shown in the example above).

7 9. A separate summary chart of total time and fees sought per individual timekeeper (not  
8 broken down by project) should also be shown at the end of the declaration. This cross-tabulation  
9 will help the Court understand all timekeepers’ respective workloads and roles in the overall case.

10 10. The declaration must also set forth (a) the qualifications, experience and role of each  
11 attorney or paralegal for whom fees are sought; (b) the normal rate ordinarily charged for each in the  
12 relevant time period; (c) how the rates were comparable to prevailing rates in the community for like-  
13 skilled professionals; and (d) proof that “billing judgment” was exercised. On the latter point, as  
14 before, the declaration should describe adjustments made to eliminate duplication, excess, associate-  
15 turnover expense, and so forth. These adjustments need not be itemized but totals for the amount  
16 deleted per timekeeper should be stated. The declaration must identify the records used to compile  
17 the entries and, specifically, state whether the records were contemporaneous versus retroactively  
18 prepared. It must state the extent to which any entries include estimates (and what any estimates  
19 were based on). Estimates and/or use of retroactively-made records may or may not be allowed,  
20 depending on the facts and circumstances.

21 11. Ordinarily, no more than one attorney and one paralegal need be present at a  
22 deposition; more will normally be deemed excessive. Ordinarily, no more than two attorneys and one  
23 paralegal need be present at a trial, claim-construction hearing or evidentiary hearing; more will  
24 normally be deemed excessive. Ordinarily, no more than one attorney need attend a law-and-motion  
25 hearing; more will normally be deemed excessive. To allow for symmetry, however, the Court may  
26 take into account the staffing used by the opposing party. Air-travel time should not be charged  
27 except to the extent services were performed. If pure air-travel time is claimed, it should be itemized  
28 with particularity.

1           12.     If the opposing party has cause to doubt the accuracy of the declaration, then the  
2 moving party must produce the original underlying time records for inspection upon request. Billing  
3 records, therefore, should be maintained so as to minimize disclosure of any arguably privileged  
4 matter. The opposing party must then file and serve any opposition. If the opponent contends that  
5 any item or project was excessive, then the opposition must explain why and provide a declaration  
6 setting forth completely all time expended *by the opposing party* on the same and on similar  
7 projects, in the same format described above, so that symmetry may be considered, making available  
8 the underlying records for inspection if requested. If any billing rates are challenged, then the  
9 opposition must state the billing rates charged to the opposing party for all professionals representing  
10 the opposing party in the case and their experience levels. The opposing declaration must also state,  
11 as to each project, the percentage of the project the opposition contends was directed at issues on  
12 which fees are awardable, stating reasons for the percentage. This percentage should then be applied  
13 against the project total to isolate the recoverable portion.

14           13.     The opposing submissions may not simply attack the numbers in the application. It  
15 must also set forth a counter-analysis. The counter-analysis should be in the same format required of  
16 the applicant, arriving at a final number. The opposition must clearly identify each line item in the  
17 application challenged as excessive, improper or otherwise unrecoverable and explain why. The  
18 opposition, for example, may annotate (legible handwriting will be acceptable) the applicant's  
19 declaration to isolate the precise numbers at issue.

20           14.     With the benefit of both sides' filings, representatives of the parties with final decision  
21 authority shall again meet in person and confer to try to resolve all differences as to the amount. If no  
22 agreement is reached, the moving party must file and serve a declaration showing full compliance with  
23 this paragraph, explaining when, where and who met, their decision authority, how long they met,  
24 what documents were reviewed together, and the principal points of disagreement.

25           15.     If no agreement is reached, one last effort at resolution will be required before turning  
26 to a special master. Both parties shall simultaneously serve and file under seal their respective  
27 proposals for the award. A proposal should be a single sentence clearly stating — without  
28 qualification — a single number for the fee award. It must be a good-faith assessment of the amount

of a reasonable award based on the entitlement order, with all issues of entitlement reserved for appeal. The proposals will later be used to determine which party was most responsible for necessitating the expense of the special master. Therefore, it is important that the proposals themselves be reasonable. Once filed, a proposal may not be amended. With the benefit of the exchange of the proposals, the parties must again confer as to the amount, reserving any issue of entitlement for appeal. This conference may be held by telephone. If no agreement is reached, the parties must try to agree on a special master. The parties shall then jointly advise the Court, after further opportunity for settlement and before the expense of a special master, whether they have reached an agreement as to the amount and, if not, whom they have selected as the special master. If they cannot agree even on a special master, then the Court shall select a special master. The parties may not directly or indirectly disclose their proposals to anyone other than each other and the Court. The proposals should not be disclosed to any special master at any time.

16. The special master shall have all the powers set forth in FRCP 53(c) and FRCP 54(d)(2)(D). The parties shall provide the special master with copies of all motion papers and other documents relevant to this dispute, with the exception of the parties' sealed proposals, which shall not be disclosed to the special master. The special master shall review the briefs and declarations by the parties on the pending motion, hear argument, and then determine a reasonable amount to award, including any fees on fees. The special master shall also determine the extent to which any discovery should be permitted — with the caution that further discovery should be the exception and not the rule. The special master shall then prepare and file a report on recommended findings and amount.

17. Absent any supplementation allowed by the special master, the foregoing submissions (together with the briefs already filed) shall be the entire record for the motion. There will be no replies unless allowed later by the special master. Any further submissions for the special master's use should not be filed with the Court. If objections are later made to the special master's report, the objecting party must file a declaration submitting to the Court a complete appendix of relevant communications with the special master.

1           18.     Once any objections to the report are resolved and a final number is determined, the  
2 Court shall then compare the parties' respective sealed proposals with the award. Presumptively, the  
3 party whose proposal was closest to the final award shall be absolved from paying any of the special  
4 master's compensation. If the movant must pay, then all of the special master's compensation shall  
5 be *deducted* from the attorney's fee award. If the opposing party must pay the special master, then it  
6 shall pay the special master *and* pay the full amount of the award. The Court will, however, reserve  
7 final judgment on allocation of the expense of the special master until a final determination of the fee  
8 issue. A final award shall then be entered.

9           19.     At the outset of a case, counsel should take care to maintain time records in such a  
10 manner as to facilitate the specific showings required above and to do so without redactions for  
11 claims of privilege.

12           20.     The foregoing guidelines apply to motions for attorney's fees. Costs will be  
13 determined in strict compliance with the local rules. If a review is sought regarding taxable costs, then  
14 the issue may also be referred to a special master (or may not). These guidelines shall not ordinarily  
15 apply in securities-fraud cases, nor for sanctions under FRCP 16, 26 or 37.  
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19 Dated: May 10, 2001.

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/s/William Alsup  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE